

WN-16J

Phil Argiroff, Chief
Permits Section
Water Resources Division
Michigan Department of Environmental Quality
525 West Allegan
Post Office Box 30473
Lansing, Michigan 48909-7973

Re: U.S. Environmental Protection Agency Review of the Proposed NPDES Permit for Aquila Resources Inc. – Back Forty Project MI0059945

Dear Mr. Argiroff:

The U.S. Environmental Protection Agency has reviewed Michigan Department of Environmental Quality's (MDEQ) Proposed National Pollutant Discharge Elimination System (NPDES) permit and MDEQ's response to comments for the proposed Aquila Resources, Inc. – Back Forty project that we received on February 1, 2017. Thank you for your response to EPA's comments on the draft NPDES permit for this facility.

We appreciate the revisions MDEQ has made to the draft permit in response to EPA's comments with regard to inclusion of mussel testing and ambient monitoring requirements, and are providing the following additional comments that we believe will make the requirements MDEQ is proposing more clear, enforceable and transparent.

Addition of mussel species to Part I, Section A.1.i. Acute Toxicity Final Requirements:

We are pleased to see that MDEQ added the mussel species *Amblema plicata* or a similarly sensitive species to the permit's Acute Toxicity Testing requirements. Please feel free to contact us if you would like to have further discuss the technical details associated with these mussel testing requirements.

Reopener Clause at Part I, Section A.1.j.

We are pleased to see that MDEQ included ambient monitoring requirement as a part of its "reopener clause" consistent with federal regulations related to monitoring at 40 C.F.R 122.44(i), 122.48(b) and 122.48(c). We have included below some recommendations regarding the "reopener clause" language that MDEQ added to the permit (including edits of the specific language in ~~strikeout~~/underline) in order to make the requirements more clear, enforceable, and

transparent. We believe that the requirement for the permittee to collect and report ambient monitoring data is critically important. This information will allow MDEQ to evaluate potential affects to water quality from the project, timely identify and evaluate any potential for unauthorized discharges, and inform future permitting decisions. Ambient monitoring is especially important to include in permits for new dischargers, such as this permit, where there is initial uncertainty regarding the potential migration of pollutants to surface waters from untested facility processes.

1. The reopener clause refers to ambient monitoring requirements contained in the Part 632 mining permit. We reviewed specifically Section K (Environmental and Facility Monitoring) of the permit and Appendix G, of the permit application referenced in that section, including Figure 5-1 of the appendix that depicts some of the sampling locations where ambient monitoring will be required under the mining permit. We were unable to locate other figures, which are referenced in Section K of the permit (such as “Figure 63-1 of the Response, June 2016”, for example). Part K.3 of the Part 632 mining permit states that “the permittee shall monitor surface water quality quarterly...” and references a “Table 2-1 of the Environmental Monitoring Plan.”
 - We strongly recommend that a comprehensive figure showing all of the ambient monitoring locations be included in a modified fact sheet for the NPDES permit, or added to the permit itself, and that an appropriate reference to it be added to the reopener clause.
2. Part K of the mining permit indicates that the permittee will submit annual reports to MDEQ for ambient monitoring. The mining permit does not indicate the format that the report will take nor how it will be made available to the public. As this is a highly visible and controversial project, we recommend that the reporting frequency be aligned with the monitoring frequency and that, accordingly, reporting should be on a quarterly basis.
 - We recommend that MDEQ require the permittee, by revising the reopener clause, to report the results of the ambient monitoring to MDEQ quarterly so that the information can be made available via the MiWaters website quarterly and this information would then be available to the public in a timely manner.
3. Part K.4.c of the mining permit states: “current ambient monitoring stations selected by the company should be revisited on a periodic basis over the life of the discharge. To reduce the effects of seasonal variability, ambient monitoring should be conducted in the same season throughout the life of the facility operations.” This language seems to imply that the permittee would not necessarily be required to return to all of the ambient monitoring stations each quarter.
 - We recommend that the NPDES permit provide additional clarity on this matter so that it is clear that the permittee is required to visit all of the monitoring locations quarterly.

Below, we have recommended edits to the Reopener Clause.

j. Reopener Clause

As a condition of this permit, the permittee shall conduct ambient surface water monitoring as

detailed in the Part 632 mining permit at Special Permit Conditions Paragraph K. Ambient monitoring locations are provided in the map enclosed with the NPDES permit fact sheet. The permittee shall conduct quarterly monitoring at each location for the parameters listed in Table 2.1 of the Environmental Monitoring Plan submitted with the Part 632 mining permit application and also provided in the NPDES permit fact sheet. The data shall be submitted on a quarterly basis via the Department's MiWaters system. The MiWaters website is located at <https://miwaters.deq.state.mi.us>. The Department will evaluate the results of the quarterly ambient surface water monitoring required under the Part 632 mining permit and determine if modifications to the permit are needed to ensure protection of surface water quality. To protect the receiving waters with applicable water quality standards, this permit may be modified in accordance with applicable laws and rules

When the Final Permit is prepared, please forward a copy and any significant comments received during any public notice period to r5npdes@epa.gov. Please include the permit number, the facility name, and the words "Proposed Permit" in the message title. If you have any technical questions related to EPA's review, please contact Krista McKim at (312) 353-8270 or at mckim.krista@epa.gov.

Thank you for cooperation during the review process.

Sincerely,

Kevin M. Pierard, Chief
NPDES Programs Branch

cc: Sylvia Heaton, MDEQ, electronically
Joe Maki, MDEQ, electronically

